

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3749 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAUD ALIAS DALA RAYSING MIYANA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. Nigam Shukla, learned Addl.P.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/10/96

ORAL JUDGMENT ;

1. This Special Civil Application is directed against the order dated 16-4-96 passed by the District Magistrate, Ahmedabad whereby the petitioner has been detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order is said to have been executed on 17-4-96 and since then the petitioner is under detention, lodged in the Baroda Central Prison, Baroda.

2. The present Special Civil Application was filed on 17-5-96 and on 20-5-96 the Rule returnable for 8-7-96

was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority. Mr.Nigam Shukla, learned Addl. P.P. has chosen to contest the petition orally.

3. The grounds of detention enclosed with the detention order show that the petitioner was engaged in the unlawful manufacture and unauthorised sale of the country liquor and was engaged in the anti social activities and Dadagiri and Gundagiri. It has also been mentioned in the grounds of detention that earlier also the petitioner was detained under the provisions of the Act on 21-4-92 and was detained in pursuance of that order on 26-4-92, but he still did not improve himself and had not given up his anti social activities, rather he continued the same. For the period subsequent to the earlier period of detention on the basis of the earlier order dated 21-4-92, the detaining authority has referred to certain cases against the petitioner in which he was involved in the manufacturing and sale of the unauthorised liquor. Such cases are ten in number with reference to the dates 30-10-94, 5-5-95, 3-6-95, 22-6-95, 21-7-95, 25-7-95, 30-7-95, 22-8-95, 4-10-95 and 20-10-95 and it has been recorded that these cases under Bombay Prohibition Act are pending against the petitioner in the court. The detaining authority has then referred to the statements of 8 witnesses who have alleged against the petitioner with regard to the different dates in March, 1996 i.e. 17-3-96, 24-3-96 and 27-3-96 saying that the petitioner was doing the unauthorised business of country liquor, was showing arms against the witnesses and threatening them if they do not agree to do what the petitioner wants to do and has been threatening the witnesses to store the stock of unauthorised country liquor. One of the witnesses has stated that when the petitioner carrying a bag of unauthorised liquor was chased by the Police he forced the witness to hold the bag and when he refused, he gave slaps to the witness and forcibly placed the bag in his shop, ran away from the spot and after the Police had gone collected the bag. Similar allegations have been made by the other witnesses and the detaining authority has mentioned that the witnesses had requested to keep their identity secret as they were frightened and afraid of the petitioner and accordingly their identity was not disclosed. The petitioner has been taken to be a bootlegger under the Bombay Prohibition Act. The detaining authority has mentioned that the petitioner was a head strong and militant person, was engaged in the anti social activities and had become a threat to the public order

and it was necessary to detain the petitioner under the provisions of the Act and accordingly the detention order was passed.

4. Learned counsel for the petitioner has challenged the detention order on various grounds including the ground that the allegations as have been levelled against the petitioner even if taken to be correct on their face value do not constitute the case of breach of public order so as to warrant the detention and at the most it can be said to be a case of breach of law and order.

5. Learned Addl. P.P. has supported the detention order orally.

6. I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations, as have been levelled, do not constitute a case of breach of public order. I have already considered the similar allegations in Special Civil Application no.3879 of 1996 decided on 4-10-96 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court, it has been found that the allegations such as levelled in the present case do not constitute the case of breach of public order and at the most it constitute a case of breach of law and order. The reasoning on which the Special Civil Application No.3879 of 1996 has been allowed applies with full force to the facts of the present case. It is, therefore, held that the detention order, as passed in this case, was not at all warranted.

7. Accordingly this Special Civil Application is allowed. The impugned detention order dated 16-4-96 passed by the District Magistrate, Ahmedabad is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.